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COMMITTEE ON
WAYS AND MEANS

COMMITTEE ON ETHICS

Congress of the United States
House of Representatives
Washington, DC 20515-4324

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September 25, 2017

The Honorable Robert Taub
Chairman
Postal Regulatory Commission
901 New York Ave., NW
Suite 200
Washington, DC 20268

POSTAL REGULATORY
COMMISSION
OFFICE OF THE SECRETARY

Dear Chairman Taub:

Please accept the enclosed correspondence for proper inclusion in your open docket IM 2016-1 on international mail. Enclosed is my June 30, 2017 letter to Secretary of State Rex Tillerson and the July 27, 2017 response letter from Mr. Charles S. Faulkner.

Thank you for your attention to this request, should you have any questions regarding this correspondence, please feel free to contact me, or my Deputy Chief of Staff, Scott Cunningham, at 202.225.6605 or scott.cunningham@mail.house.gov.

Sincerely,


Kenny Marchant
Member of Congress

Enclosures (2)



United States Department of State

Washington, D.C. 20520

The Honorable
Kenny Marchant
House of Representatives
Washington, DC 20515

JUL 27 2017

Dear Mr. Marchant:

Thank you for your June 30 letter regarding the Universal Postal Union (UPU) Convention. The Department shares your concern about losses sustained by the U.S. Postal Service (USPS) on the delivery of inbound international mail and has been working within the UPU to address this issue.

The Convention adopted by the UPU Congress in Doha in 2012 significantly improved USPS's compensation for inbound delivery of international mail compared to the former methodology but did not result in the expected improvements in cost coverage because of rapid changes in the composition of the mail stream. The ecommerce-driven surge in the volume of "small packets" (the UPU classification for most items under two kilograms), especially from China and several other rapidly industrializing economies, and the relative decline of "small letters" (the UPU classification roughly corresponding to first class mail), simply overwhelmed the benefits of the improved methodology.

The UPU Congress that met in Istanbul in September of 2016 adopted a Convention that accounts for the growing prominence of small packets in international letter post. This new Convention compensates postal operators at significantly higher rates for small packets than for small letters or flats, and the countries that account for the highest volumes of small packets mailed to the United States will see 13 percent year-on-year increases in charges for delivery of these items beginning January 1. The Department and USPS worked intensively over the course of four years to achieve this outcome. Our assessment is that this change, and other reforms contained in the new Convention, will have a dramatic positive impact on USPS's compensation. We note USPS's own assessment that the Convention will provide it with full cost coverage.

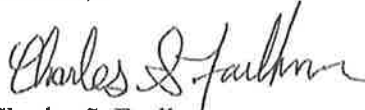
The 2012 Convention, which will cease to be in operation on December 31, 2017, and the 2016 Convention, which will enter into force on January 1, 2018, both underwent OMB Circular-175 review and were signed by a representative of the United States under delegations of authority from former Secretaries Clinton and Kerry respectively. The United States has not formally approved the 2012 UPU Convention but has nevertheless conducted itself in accordance with the Convention's provisions. (The 2008 Convention, which the United States did join, ceased to operate on December 31, 2013, when the 2012 Convention entered into force.) The Convention provides the framework for international mail exchange across the single postal territory that the UPU comprises, and, regardless of whether the United States is a party to a particular UPU Convention, there is, as a practical matter, no viable alternative framework under which the U.S. could exchange mail with other UPU member countries. As you note, the Convention provides

for the charges applicable to some deliveries to be established by UPU regulations that are written by the Postal Operations Council after the UPU Congress has concluded. These regulations are an integral part of the Acts of the Union, which also include the UPU Constitution, General Regulations, and Convention. The United States received its official certified copy of the Acts of the 2016 Congress, including the Convention, near the end of June 2017 and has not yet approved the 2016 Acts. We do not have a comprehensive list of those UPU member countries that have approved the 2016 Acts, although it would be unlikely that many have done so at this early date. The text of the 2016 Acts, including the Convention, is posted on the UPU website (<http://www.upu.int/en/the-upu/acts/last-congress-acts.html>). If and when the 2016 Convention enters into force for the United States, it will be transmitted to the Congress in accordance with 1 USC § 112b(a) and published on the Department's website in accordance with 1 USC § 112a(d). Because the United States did not approve the 2012 Convention, it was not transmitted to the Congress or published on the Department's website.

Thank you again for your interest in this important subject. Since the United States' commitment to the UPU framework secures Americans' ability to participate in the global network of international mail exchange, it is essential that this framework not be a burden to USPS or to any segment of the mailing public.

We hope this information is useful. Please do not hesitate to contact us if we can be of further assistance on this or any other matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Charles S. Faulkner". The signature is fluid and cursive, with the first name "Charles" being more prominent.

Charles S. Faulkner
Bureau of Legislative Affairs

KENNY MARCHANT
24th District, Texas

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June 30, 2017

The Honorable Rex W. Tillerson
Secretary of State
U.S. Department of State
2201 C Street, NW
Washington, DC 20520

Dear Secretary Tillerson:

I remain greatly concerned regarding the significant financial losses incurred by the United States Postal Service (USPS) as a result of the Universal Postal Union's (UPU) recent conventions. As noted by the Postal Regulatory Commission's (PRC) *Annual Compliance Determination Report* of March 28, 2017, the USPS lost \$134.5 million on international letter post in Fiscal Year 2016. This was a stark increase from the \$97.9 million in losses from 2015. The PRC further comments that in 2016, the USPS only receives 66.4% of cost coverage for international letter post. In contrast, USPS receives a cost coverage of 226.7% for domestic first class mail (the equivalent of the international letter post). Sadly as a result of this great inequity, American postal ratepayers are subsidizing one-third of the delivery cost for foreign mailers and paying far more than foreign mailers for comparable delivery services.

The USPS has long held that it is forced to comply with terminal dues rates set by UPU Conventions. Yet, according to a recent report by the UPU, as of April 17, 2017, the United States had not approved the acts of the 2012 UPU Congress, including, presumably the 2012 Convention which has been in effect since the beginning of 2014. See <http://www.upu.int/en/the-upu/acts/member-countries-legal-situation.html>. In apparent confirmation, the 2016 edition of the Department's publication, *Treaties in Force*, does not include the 2012 UPU Convention is the list of international agreements to which the United States is a party.

Indeed, in trying to understand status and legal consequences of the UPU Conventions, I find more questions than answers. To this end, I would very much appreciate it if you could clarify a number of points about the applicability of UPU Conventions to the United States.

1. It is my understanding of federal law that UPU Conventions and other UPU agreements are "Congressional-Executive agreements" which are authorized, and limited, by the delegation of authority to the Secretary of State set out in 39 U.S.C. § 407. Before a UPU agreement can become binding on the United

States, it must formally approved by the Secretary or his delegate. Prior to approval, the Department of State carefully reviews the consistency of such agreements with the laws and interests of the United States in something called a "Circular 175 Procedure." After approval, the U.S. is required to notify the UPU so that the UPU can inform its members of what countries are parties to which agreements. As with any Congressional-Executive agreement, shortly after a UPU agreement goes into effect, the Secretary of State is required to notify Congress and publish the text of the agreement on the Department's internet site. If my understanding of these procedures is incorrect or incomplete in any respect, could you please assist me with the appropriate references to federal law?

2. Did the State Department follow these procedures for the 2008 and 2012 UPU Conventions and related UPU agreements? That is,
 - a. Did the Department prepare a Circular 175 analysis?
 - b. Did the Secretary or his delegate formally approve the UPU Convention and/or other UPU agreements?
 - c. Did the Department notify the UPU of U.S. approval?
 - d. Did the Department notify Congress after the UPU Convention and/or other UPU agreements went into effect?
 - e. Did the Department notify publish the text of the UPU Convention and/or other UPU agreements on its internet site?

In each case, could you please provide copies of the relevant analyses and documents or internet citations.

3. Which countries are today parties to the 2012 UPU Convention? Is it correct to say that only these countries are bound by the terminal dues provisions of the Convention and then only with respect to letter post items exchanged with other parties?
4. Some delivery charges are established by UPU regulations that are adopted after the end of a UPU Congress by the committee of postal officials called the Postal Operations Council. What is the legal status of these regulations? Do the regulations constitute a Congressional-Executive agreement binding on the United States? If so, have the regulations been subject the same analysis, approval, and publication procedures applicable to the UPU Convention? If not, why not? In your view, how can it consistent with the national policies adopted by Congress in 39 U.S.C. § 407(a) for the United States to subject itself to regulations of a Postal Operations Council dominated by large, commercially interest postal operators?
5. What is the status of the 2016 UPU Convention and related agreements due to become effective on January 1, 2018? Which countries have formally approved these agreements? What is the status of U.S. consideration of these agreements? Please provide a copy of Department's Circular 175 analysis or

other analyses of the consistency of these agreements with the laws and interests of the United States.

Given the significant issues still unresolved regarding formal US approval of the 2012 UPU Convention, I respectfully request that the Department of State withhold any formal approval of the 2016 UPU Convention. The US should not formally approve of any UPU Convention that does not ensure full protection of our ratepayers. In addition to ensuring protection for our rate payers, domestic shippers shouldn't have to be placed at a major strategic disadvantage against foreign competitors that have been able to ship internationally to the United States at a cheaper cost than domestic shippers. We should take this opportunity to not be locked-in to agreements shaped by the past Administration that undoubtedly are bad for US postal ratepayers and shippers.

Thank you for your attention to this correspondence and I look forward to receiving your prompt reply. Should you have any questions regarding this letter, please feel free to contact me, or my Deputy Chief of Staff, Scott Cunningham, at 202.225.6605 or scott.cunningham@mail.house.gov.

Sincerely,



Kenny Marchant
Member of Congress